



**Testimony
Betsy Gara
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Connecticut Council of Small Towns
Before the Environment Committee
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The Connecticut Council of Small Towns (COST) appreciates the opportunity to comment in **support** of **HB-5709, AN ACT CONCERNING THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION'S AUTHORITY TO DESIGNATE ADDITIONAL STORMWATER SEWER SYSTEMS OUTSIDE OF URBAN AREAS.**

Connecticut's small towns recognize the importance of protecting water quality in our communities and have embraced efforts to protect the state's water and other natural resources by preserving open space and watershed lands, addressing non-point source pollution, and adopting "green" land use regulations.

Many towns and public works departments are also developing innovative strategies to address challenges associated with stormwater. For example, the Town of Coventry installed two high-tech catch basin systems in the last 10 years to keep pollution in runoff out of Coventry Lake. Each cost \$35,000. Unfortunately, if Coventry is required to comply with the numerous "housekeeping" and reporting requirements under the General Permit, it will not have the resources to fund technologies such as these that truly address stormwater issues.

We are concerned that DEEP's General Permit – even as revised – contains overly prescriptive requirements and "make work" provisions that undermine the ability of municipalities to address stormwater and water quality issues at the local level. Addressing unique local and regional stormwater issues requires flexibility to ensure that limited financial resources can be used in a way that maximizes the impact of MS4 operations in addressing water quality issues.

We are also concerned that DEEP's MS4 General Permit exceeds EPA's requirements, imposing costly unfunded mandates on towns at a time when communities continue to struggle to fund core municipal services, such as education, public safety and public health. Although DEEP has revised the General Permit to eliminate some of the most onerous provisions, such mandatory leaf pick-ups and rigid street sweeping schedules, the General Permit continues to exceed the requirements of the federal law, imposing an untenable burden on all of Connecticut's small towns.



Proposed General Permit Exceeds the Requirements Set Forth by US EPA

Currently, the United States Environmental Protection Act (EPA) requires municipalities that own and operate storm sewer systems in Urbanized Areas to comply with MS4 General Permits in accordance with EPA standards. EPA does not require coverage of municipalities outside of Urbanized Areas because these communities do not have a significant amount of impervious cover – roads, parking lots, etc. – which create water quality problems relative to stormwater runoff.

DEEP, however, is exceeding the requirements of the federal law by imposing numerous “make work” requirements on 49 smaller communities in Connecticut, without regard for cost and/or whether the requirements will have any appreciable impact on water quality.

EPA’s Revised Stormwater Rules Have Not Been Formally Adopted

Although DEEP indicates that certain requirements are consistent with EPA’s revised stormwater rules, the revised rules have not yet been adopted and have been the subject of significant controversy. It is therefore premature to adopt permit requirements in Connecticut based on federal provisions which are in a state of flux.

Proposed General Permit Imposes a Considerable Unfunded Mandate on Municipalities

According to OPM, Connecticut is in a state of “permanent fiscal crisis”. For Connecticut’s small towns, state aid to municipalities has been largely flat funded for several years now, shifting more of the burden to fund education, public safety and other critical programs onto the backs of property taxpayers. Given the ongoing budgetary challenges facing the state and municipalities, Connecticut must refrain from imposing new unfunded mandates on municipalities which drive up local costs beyond the control of property taxpayers.

Unfortunately, as drafted, the proposed General Permit imposes extensive mandates on municipalities without providing any funding to assist in compliance. These requirements include new fees, extensive reporting requirements, testing and monitoring requirements; GIS mapping requirements, the adoption of new or updated local ordinances and land use regulations, a public education and outreach campaign, and the development and certification of comprehensive stormwater management plans.

DEEP has Broad Authority to Issue the General Permit without Addressing Municipal Concerns

Numerous towns testified at the public hearing regarding concerns with the burdensome requirements included in the MS4 General Permit. Attached are excerpts from more than 30 towns and organizations that testified or submitted comments outlining concerns with the permit. Subsequent to the public hearing, DEEP did revise the General Permit to address some



of the more onerous provisions referenced in the attached comments. However, even as revised, the General Permit continues to impose a sizable unfunded mandate on towns and cities beyond the requirements of the federal law.

Despite the huge outcry regarding the millions of dollars in costs associated with the proposed General Permit, under current law, DEEP has broad leeway to determine whether to issue the General Permit as revised or address concerns raised by municipalities. Absent costly and protracted litigation, the agency under these circumstances has free rein to impose these costs on our towns and cities without oversight of the legislature and without undertaking any type of cost-benefit analysis.

To address these concerns, COST supports legislation to:

- 1) Exempt the 49 small towns that are not required to be covered by the permit under federal law;
- 2) Ensure that DEEP does not impose requirements on Tier 1 municipalities that exceed the federal requirements;
- 3) Require DEEP to undertake a true cost/benefit analysis of new permit requirements
- 4) Consider ways of ensuring that there is a more collaborative, less adversarial model used for revising the General Permit that ensures that stakeholders have the opportunity to develop realistic goals and balanced solutions to address stormwater issues without imposing numerous unfunded mandates on municipalities; and
- 5) Consider whether there should be greater oversight of DEEP's permitting process to ensure that permits do not include extensive unfunded mandates without regard for the fiscal challenges facing our towns and cities. For example, permits could be required to be adopted pursuant to the Uniform Administrative Procedures Act, which would provide greater transparency regarding the costs and scope of agency policies.

Thank you for the opportunity to comment in support of HB-5709.



Unfunded Mandates for Tier 2 Municipalities

As revised, towns will be required to:

1. Define appropriate Best Management Practices (BMPs) and designate a person(s) and job title responsible for each BMP; define a time line for implementation of each BMP; where appropriate, identify the location, including the address and latitude and longitude, for each BMP; and define measurable goals for each BMP.
2. Develop a Public education and outreach Plan – Must include information on management of pet waste and yard waste, application of fertilizers, herbicides, and pesticides, and impacts of illicit discharges and improper disposal of waste into the MS4.
3. Enforce an Illicit Discharge Detection and Elimination program – Requires municipality to prohibit all illicit discharges from entering its MS4 and establish the necessary and enforceable legal authority by statute, ordinance, etc. to prohibit and eliminate illicit discharges.
4. Construction Site Stormwater Runoff Control – Adopt an ordinance, bylaw, etc. to implement and enforce a program to control stormwater discharge, including a plan for interdepartmental coordination, site review and inspection, public involvement, state permit notifications (to its MS4) associated with land disturbance or development (including re-development) activities from areas with one half acre or more of soil disturbance, whether considered individually or collectively as part of a larger common plan.
5. Adopt or Update Post –construction stormwater management land use regulations requiring the use of Runoff Reduction/ Low Impact Development (“LID”) Measures.
6. Create a formal employee training program to increase awareness of water quality related issues in management of its MS4.
7. Repair and rehabilitate MS4 Infrastructure in a timely manner.
8. Parks and open space – “Optimize” the application of fertilizers by municipal employees, or private contractors on lands and easements for which it is responsible for maintenance through soil testing and analysis.
9. Establish practices for the proper disposal of grass clippings and leaves at municipal owned lands.
10. Develop Pet waste and water fowl management plans
11. Establish procedures for the storage of municipal vehicles
12. Establish and implement procedures for sweeping and/or cleaning municipal parking lots and drainage systems
13. Develop and implement standard operating practices for the use, handling, storage, application, and disposal of deicing products such as salt and sand to minimize exposure to rainfall and stormwater runoff; for roadways and parking lots, explore means to



minimize the use and optimize the application of chloride-based or other salts or deicing product (while maintaining public safety) and evaluate opportunities for use of alternative materials

14. Conduct a street sweeping program to remove sand, sediment and debris from municipal streets once per year and inspect all streets except uncurbed rural roads and determine a street sweeping schedule
15. Document results from street sweeping program including, at a minimum: a summary of inspection results, curb miles swept, dates of cleaning, cubic yards volume or mass of material collected, and method(s) of reuse or disposal.
16. Leaf Collection Management - Develop a town-wide leaf pickup management program annually on or before December 15 which will prohibit the leaves from being deposited on streets, parking lots, driveways, sidewalks or other paved surfaces.
17. Catch Basin Cleaning - Develop and implement a program for the routine cleaning of all catch basins and stormwater structures and document the number of inspections, number of structures cleaned, volume
18. For waters for which Nitrogen is a Stormwater Pollutant of Concern, implement turf management practices and procedures policy which includes, but is not limited to, procedures for proper fertilizer application on lands owned by the town and the planting of native plant materials to lessen the amount of turf area requiring mowing and the application of chemicals.
19. Develop, fund, implement, and prioritize a Retrofit a source management program for certain areas including dog parks, parks or areas with open water, sites with failing septic systems
20. Prohibit the feeding of geese or waterfowl and implement a program to manage goose populations, including posting notices



**Excerpts from Testimony Provided Re:
DEEP's Proposed MS4 General Permit**

"To put it bluntly and come straight to the point, compliance with some of the proposed requirements with the time frame allowed is both logistically and financially impossible. At present, the Town of Bethel does not possess sufficient manpower or equipment that would be needed to comply with the new regulations. Taken together, implementing these proposed regulations could conceivably add close to one million dollars annually in new operational costs, to be funded by the taxpayers of Bethel."

Matthew Knickerbocker, First Selectman, Bethel

"For us to comply with the proposed General Permit, as drafted, will place a considerable burden on our municipal budget and will necessitate untenable increases in property taxes. The hardships imposed on Bolton and out taxpayers by this proposed General Permit are extremely substantial. Our engineer has estimated that our budget will need to be increased by 200% to 300%."

Joyce M. Stille, Administrative Officer, Town of Bolton

"From the Tier 1 municipalities and Tier 2 towns' points of view, the DEEP is proposing an unfunded mandate that will be financially burdensome with very marginal overall benefit. The "up front" capital expenses will be huge, and the labor costs must be included in any analysis. The result will be higher property taxes."

Curtis Read, First Selectman, Town of Bridgewater

"Brookfield is predominantly suburban and rural with relatively low population density. In our judgment, the proposed regulation changes would have very little if any impact on water quality. Conversely, they would require exorbitant increases in annual operating costs, and very significant investments in equipment."

William N. Tinsley, First Selectman, Town of Brookfield

"Given the state's current fiscal challenges, DEEP should focus on assisting towns in addressing stormwater issues rather than mandating costly requirements on towns whose budgets are already strained to capacity. Moreover, it should target its limited resources to helping the urbanized areas address stormwater issues, which is consistent with the goals of the Clean Water Act, rather than extend the requirement to small rural communities, such as Chaplin."

William H. Rose IV, First Selectman, Town of Chaplin

"DEEP's proposed General Permit imposes staggering costs on towns at a time when they continue to struggle to fund core municipal services, such as education, public safety and public



health. Given the state's ongoing fiscal challenges, it is irresponsible for a state agency to impose an unfunded mandate of this magnitude on Connecticut's small towns. The proposed permit goes way beyond what is required under federal law without regard for what it will cost or whether it will have any positive impact on water quality.

Betsy Gara, Executive Director, COST

"Without funding to enact the proposed changes, the draft permit as written would place undue burden on municipalities, and would present serious impediments to local compliance. Since the success of stormwater reduction and surface water quality programs is dependent on this compliance, the draft permit has the potential to limit the future success of these programs."

Samuel S. Gold, AICP, Executive Director, Council of Governments Central Naugatuck Valley

"The Town of Coventry is opposed to the expansion of the MS4 regulations and the significant financial and management impact on smaller communities. We have 240 lane miles of road with only 6 truck drivers. We would have to hire 8 employees for 3 months and outfit at least 6 trucks. This will divert all road and drainage work."

John Elsesser, Town Manager, Town of Coventry

"COST and its member towns recognize the importance of protecting water quality in our communities and have embraced efforts to protect the state's natural resources by preserving open space, abating sources of pollution and adopting land use regulations to protect water resources. However, the proposed General Permit imposes excessive unfunded mandates on towns at a time when communities – and our taxpayers - continue to struggle to make ends meet."

Dick Smith, First Selectman, Deep River

"The state mandated increases referenced in the Draft Permit that require increased frequency of municipal street sweeping, leaf collection programs, catch basin cleaning, and new requirements for the disposal of snow would tax our existing resources in the Public Works and Highway Departments. We are amenable to modifications in the program that improve the stormwater quality in our and other towns, but are completely opposed to any of the items that require additional expense to implement."

Victor Benni, Director of Public Works, Town of East Lyme

"In addition to the considerable upfront capital costs, we will incur significant increases in personnel costs, including outside consultants, and ongoing operating costs. In going beyond the scope of what EPA requires, DEEP has failed to take into account time and budget constraints that affect small towns such as Franklin."

Richard L. Matters, First Selectman, Town of Franklin



“Prior to any DEEP plan adoption, what is needed are realistic cost estimates in order to accomplish this task. We should have one from every municipality. This is a practical approach to accomplish what is desired and to identify the costs associated. Doing so may also avoid encountering future and often wasteful enforcement measures from towns and DEEP.”

William F. Smith, Town Manager, Granby

“I am also disappointed that these new regulations will represent a significant and expensive new unfunded mandate on the municipalities of the State. In this times of continued economic stagnation these requirement cannot easily funded and other important governmental services will, of necessity, be shortchanged.”

Peter Tesei, First Selectman, Town of Greenwich

“The proposed General Permit is an example of an unfunded mandate that undermines our efforts to control local costs. This is particularly troubling because most of the requirements included in the General Permit will not help improve water quality in our area. Plus, it will force us to divert resources and manpower away from other critical programs, such as road and building maintenance.”

Michael Criss, First Selectman, Town of Harwinton

“The Town of Marlborough finds, after reviewing these revisions, that implementation will have serious adverse financial and manpower impacts. An example of this manpower impact is that one of the six maintainers would need to be dedicated to the street sweeping program during the warmer months when road maintenance and repairs are performed. This reduces the available workforce by 16% to perform essential tasks to maintain public safety.”

Peter F. Hughes, Planning & Development Director, Town of Marlborough

“Our Finance Director calculated that the additional direct cost due to MS4 will be \$11,000 sampling; \$37,000 sweeping; \$22,000 vacuum; and \$6,000 overhead. Total \$72,000 for a town of 4,000 inhabitants plus the cost to dispose of the polluted material. Please try to reduce mandates not increase.”

Jon Brayshaw, First Selectman, Town of Middlefield

“The Town of New Canaan truly supports efforts to mitigate issues related to stormwater discharge, but feel these proposed regulations would do little to accomplish that worthwhile goal while instead creating a bureaucracy, economic hardship and reporting structure detrimental to that end.”

Robert E. Mallozzi III, First Selectman, Town of New Canaan



“Small rural towns, including Lyme, will have to comply with numerous, costly mandates, including: conducting annual leaf pickups, updating land use regulations, adopting new ordinances, conducting public outreach and education programs, the development of Best

Management Practices and completing voluminous reports. This will impose a considerable burden on Lyme and its taxpayers.”

Ralph Eno, First Selectman, Town of Lyme

“The proposed changes are not logistically, operationally or economically feasible or attainable. DEEP has failed to demonstrate how the proposed changes will improve water quality and in my opinion the permit modifications may have the exact opposite effect.”

Michael F. Zarba, PE, Public Works Director, Town of New Milford

“Without any documentation provided to us of past program success or any promise of future tangible results, the “new” MS4 permit proposal will cost the Town of Newtown over \$5.676 million to implement initially and \$3.055 million annually to operate and maintain the program. More scarce funds would be required for a program that has no history of results or the ability to guarantee a different outcome in the future.”

Fred Hurley, Director of Public Works, Town of Newtown

“The proposed MS4 regulations, especially the Tier II additions, will have adverse impact to the towns of northeastern Connecticut and little benefits to the shared goal of protecting water quality. The long list of unfunded mandates will significantly impact already stressed local budgets.”

John Filchak, Executive Director, NECCOG

“While the Northwestern Hills Council of Government (NHCOG) supports the DEEP’s goal of ‘protecting the waters of the state’ we find the proposed General Permit modifications to be onerous, unreasonable, and economically impracticable.”

Richard Lynn, AICP, Executive Director, NHCOG

“There are far too many mandates in the proposed General Permit. While the Town of Old Saybrook has done very well in updating its compliance, now is not the time to burden us with new rules and regulations that will require us to pay consultants or increase personnel.”

Carl Fortuna, First Selectman, Town of Old Saybrook

“The new requirements proposed by the General Permit would increase the unfunded mandates on Putnam. They would cause Putnam to incur new or increased fees that would be an additional financial burden to the town. Even if the state were to come up with the financial



resources to cover many of these proposed requirements, it would still put a tremendous strain on municipal manpower to manage and administer the new items.”

Doug Cutler, Town Administrator, Town of Putnam

“It is conservatively estimated that an additional nine employees will have to be hired to work exclusively on the various permit requirements. Coupled with the additional equipment required to sweep streets and sidewalks to the extent required, collect leaves on a town-wide basis, and collect and combine the information into yearly reports, it will require in the neighborhood of \$1,000,000+ per year in additional taxes which will be borne exclusively by Ridgefield’s taxpayers.”

Rudy Marconi, First Selectman, Town of Ridgefield

“In light of the state’s ongoing struggles, it is surprising that the state Department of Energy & Environmental Protection (DEEP) has proposed a new unfunded mandate on small towns. The proposed General Permit goes well beyond what is required under federal law and imposes numerous burdensome requirements on towns, including towns in rural areas such as Roxbury. These requirements include new or increased fees, extensive reporting requirements, rigid street sweeping requirements, expanded monitoring requirements, mandated municipal leaf pick-ups, and more.”

Barbara Henry, First Selectman, Town of Roxbury

“It makes no sense to impose more burdensome unfunded mandates on municipalities that will not result in any significant improvements in water quality. In this depressed economy, more bureaucratic regulations and their associated costs are the last thing Connecticut Municipalities need from the DEEP.”

Robert F. Kulacz, P.E., City Engineer, City of Shelton

“While SCRCOG and our member municipalities recognize the importance of improving surface water quality throughout our state, surely this laudable goal could be accomplished in a more gradual, achievable, and less costly manner, and without the state’s municipalities having to shoulder the entire burden.”

Carl J. Amento, Executive Director, South Central Regional Council of Government

“Any state mandate requiring a municipal response of this magnitude should be accompanied with supportive state funding in order to be realistically implemented. This proposed unfunded state mandate would create significant additional burdens on our local taxpayers to achieve desired compliance.”

South Western Regional Planning Agency



“Our small town does not have the resources to comply with this unnecessary unfunded mandate. A town as rural as Sprague should not be held to the same testing and enforcement standards as large cities. Compliance is beyond our resources.”

Catherine A. Osten, First Selectman, Town of Sprague

“As presented, this permit imposes significant unfunded mandates upon the town and would require a significant reallocation of scarce resources that would potentially have a serious adverse impact upon the quality of life of the residents of Watertown. The permit would take the flexibility and judgment of the professionals and elected officials out of the program and implement one size fits all solutions for both the program implementation and the allocation of resources serving the public”.

Roy E. Cavanaugh, P.E., Director of Public Works, Watertown

“The proposed MS4 General Permit requirements are excessive and exceed even those requirements established by US EPA for Tier 2 Towns. This “one size fits all” approach places an unfair financial burden particularly on smaller municipalities lacking the resources to meet these onerous requirements.”

Gayle Weinstein, First Selectman, Town of Weston

“The new permit, as proposed, contains significant changes and is highly prescriptive in terms of what municipalities must do – from its requirements to implement leaf pick up programs regardless of need to dictating street sweeping frequency without a clear link to practicality and need in all cases.”

Stephen J. Edwards, Director of Public Works, Town of Westport